



Hudson's Bay
1868
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CONFIDENTIAL.

Précis on the Hudson's Bay Company.

21st January 1868.

IN considering the questions now to be determined about the Hudson's Bay Company and their territory, it may be convenient to have a reference to some of the transactions on the same subject for some years past.

The Company's Charter was granted to them by King Charles the Second in 1670. For nearly 200 years it has been recognised by the Crown.

Parliamentary Paper, 542, July
1850.

In 1849 the House of Commons addressed the Crown, praying that an inquiry might be made into the legality of the powers claimed by the Company in respect of territory, trade, taxation, and government. The Company accordingly furnished a statement of their claims. The law officers of that day (Sir John Jervis and Sir John Romilly) gave their opinion that "the rights so claimed by the Company do properly belong to them." They added that for a more formal argument and decision of the questions at issue, the best tribunal would be the Judicial Committee of the Privy Council. The Complainants were asked if they would take proceeding for the purpose, but they declined; and so the matter ended in 1850.

Commons Committee, 1857,
page 403.

In 1857, with reference to a despatch from Canada, laying claim to much country claimed also by the Company, the Crown lawyers (Sir Richard Bethell and Sir Henry Keating) gave an elaborate opinion: "The Charter could not be considered apart from its existence for nearly two centuries, and nothing could be more unjust than to try this Charter as a thing of yesterday." The Crown could not with justice question the validity of the Charter, nor the Company's territorial ownership of the land granted to it. But subject to certain qualifications, the Law Officers did not think that any exclusive rights of govern-

ment or monopoly of trade could be insisted on by the Company as having been legally granted to them by the Crown, although the Company did possess limited powers of passing ordinances, and exercising civil and criminal jurisdiction. The geographical extent of the Company's territory might properly and with advantage be subjected to judicial inquiry, and this might best be effected (with consent of both Canada and the Company) through the Judicial Committee of the Privy Council.

A Committee of the House of Commons inquired into the subject of Hudson's Bay in 1857. They reported as follows:—

Vancouver should be erected into a colony:

The trading license of the Company should be renewed over all parts of the territory not required for Colonies:

Canada should be enabled to annex districts, such as Red River and Saskatchewan, with which it could open communication, and the Government should endeavour to arrange the terms on equitable principles with Canada and the Company.

If the Charter offered obstacles, the Government could best promote an amicable adjustment, in communication with the Company as well as with the Government of Canada.

Lord Taunton was at that time Secretary of State, and had also been Chairman of the Committee. He determined to make Vancouver a Colony, and he offered the Company a renewal of their trading license for twenty-one years. He also offered to refer the question of boundary to the Privy Council, if both parties consented, but he emphatically refused to do so if the validity of the Charter was to be called in question. The Company assented. The Legislature of Canada declined to proceed without liberty to contest the Charter itself; and added that Canada should not be called upon to compensate the Company for any portion of territory from which they might be required to withdraw.

This closes the correspondence in which Lord Taunton was concerned.

Lord Lytton, on the 22nd of December, 1858, proposed to the Government of Canada to test

N.B.—On subject of boundary, see useful information in Sir William Draper's letter, Parliamentary Paper 104, of 1857; or Commons Committee, 1857, page 374.

Parliamentary Papers, 224, 260, of 1857.

January 20, 1858. Parliamentary Paper No. 99, 1858.

Governor, August 16, 1858. Parliamentary Paper, April, 1859, page 6.

Parliamentary Paper, April, page 6.

the validity of the Company's Charter by *scire facias*, but the Canadian Government declined. His Lordship objected to renew the Company's trading license for more than two years, which terms they would not accept, so their license has ceased. The grounds of Lord Lytton's policy will be found set forth in a letter to the Company, dated March 9, 1859.

Parliamentary Papers, page 23.

Manuscript records in Colonial Office; especially Hudsons Bay Company's Letter of May 30, 1860; August 9, 1861.

In 1859 under Lord Lytton, and again in 1860 and 1861 under the Duke of Newcastle, a Bill was contemplated to facilitate the acquisition from the Company of lands required for settlement. Copious Minutes on the subject are recorded, and discussions took place with the Company, but the measure was never actually brought into Parliament. No agreement was arrived at on the subject with the Company. The principle of the Bill appears to have been that the Crown might take from time to time portions of the territory required for Colonies, but that the Company should be compensated,—from what source not being stated.

Lords' Paper, No. 191, of 1863
page 17.

About Midsummer 1863, the Hudson's Bay Company largely changed its proprietary, and virtually amalgamated with some gentlemen, who, chiefly under the management of Mr. Watkin, projected a communication across the continent by road and telegraph from Canada to British Columbia. Sir Edmund Head was elected governor.

Manuscript records.

On the 11th November, 1863, Sir Edmund observed that a complete purchase of the Company's territory by the Crown would probably be the best solution; but knowing the obstacles to this, he made the following suggestions:—

1. An equal division of the portion of the territory fit for settlement between the Company and the Crown, with inclusion of specified tracts in the share of the former.

2. The Company to construct the road and telegraph.

- 3 and 4. The Crown to purchase such of the Company's premises as should be wanted for military use, and to pay to the Company a net third of all future revenue from gold or silver.

On 11th March and 5th April, 1864, the Duke of Newcastle declined, but made the following counter proposals:—

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1. The Company to surrender to the Crown their territorial rights.

2. To receive 1s. for every acre sold by the Crown, but limited to 150,000*l.* in all, and to fifty years in duration. whether or not the receipts attained that amount.

3. To receive one-fourth of any gold revenue, but limited to 100,000*l.* in all, and to fifty years in duration.

4. To have one square mile of adjacent land for every linear mile constructed of road and telegraph to British Columbia.

On 13th April, 1864, the Company accepted the principle of these proposals, but said that the amount of payments within fifty years should be either not limited, or else to 1,000,000*l.* instead of 250,000*l.* They added some after proposals, including a grant to them of 5,000 acres of wild land for every 50,000 acres sold by the Crown.

On the 6th of June, 1864, Mr. Cardwell, who had succeeded to the office of Secretary of State, stated that he could not accept these proposals without considerable modification.

On the 7th of December 1864, Sir Edmund Head, while not receding from his former proposals, threw out an alternative, of which the principal feature was a payment to the Company of 1,000,000*l.* sterling for the territory defined in his letter.

No direct answer to this appears. Mr. Brown, a distinguished Canadian Minister who was then in England representing his colleagues on this subject, contended that the Company were seeking to sell to Her Majesty's Government for an enormous sum, territory to which they had no title under their charter. His opinion was that it was the part of the Imperial Government to secure the extinction of the Company's proprietary rights and exclusive rights of trade; and that then Canada should undertake the duties of Government.

In the spring of 1865, a delegation of Ministers from Canada (including Mr. Brown) came home on this and other important topics. As regards the present subject, Mr. Cardwell recorded the result as follows. "On the fourth point, the subject of the North Western Territory, the Canadian Ministers desired that that territory

Mr. Brown to Governor and Council of Canada, January 26, 1865:—in Lord Monck's No. 87, March 28, 1865.

Mr. Secretary Cardwell, No. 95, June 17, 1865; Parliamentary Paper of June 19, 1865.

should be made over to Canada, and undertook to negotiate with the Hudson's Bay Company for the termination of their rights, on condition that the indemnity, if any, should be paid by a loan to be raised by Canada under the Imperial guarantee. With the sanction of the Cabinet, we assented to the proposal, undertaking that if the negotiation should be successful, we on the part of the Crown being satisfied that the amount of the indemnity was reasonable, and the security sufficient, would apply to the Imperial Parliament to sanction the arrangement and to guarantee the amount."

Sir E. Head, February 6, 1866.

Colonial Office, February 26,
1866.

Sir E. Head, March 1, 1866.

Lord Monck, No. 68, June 23,
1866.

Negotiations, however, did not follow. In February 1866, Sir Edmund Head communicated a proposal made to the Company (through Mr. McEwen) by certain Anglo-American capitalists to buy its cultivable territory in order to settle it on American principles of organisation. Mr. Cardwell in answer, reminded Sir Edmund Head of the above-mentioned understanding between the Canadian Delegates and Her Majesty's Government. Sir Edmund replied that the Company had never lost sight of it, but begged to know how long this option, if it might be so called, on the part of Canada was to be supposed to remain open, and pointed out the consequences to the pecuniary interests of the Company if they were to be considered bound to lose favourable opportunities of sale, and restrained by a very indefinite understanding between two other parties from dealing to the best advantage with their own property. These letters were sent to Canada. The Canadian Ministers replied in a minute of the 22nd of June, 1866. While repeating that they contested in many respects the pretensions of the Company, they expressed a strong conviction of the importance of the early establishment of a regular Government in the territories intervening between Canada and British Columbia, and said that they would, ere this, have opened negotiations with the Company for the extinction of their claims, were it not for the prospect of a speedy Confederation of the Provinces. The Canadian Ministers had thought it improper to enter upon negotiations which could only be

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completed and fulfilled by the Confederate Government and Legislature, but had no doubt that these "would feel it to be one of their first duties to open negotiations with the Hudson's Bay Company for the transfer of their claims to the territory. Meanwhile Canada invites the aid of Her Majesty's Government in discountenancing and preventing any such sales of any portion of the territory as is now applied for." This reply of the Canadian Ministers was communicated to the Company in July 1866.

In January 1867, Lord Carnarvon reverted to the subject. His Lordship suggested to the

Colonial Office to Sir E. Head,
July 31, 1866.

Company that, whilst doubtless they were free to consult their own interests, yet with reference to what had passed with the Canadian Government, it would not be advisable to take any step which would embarrass the expected negotiations. In April 1867, the Delegates from British North America on Confederation deprecated the formation of a Crown Colony in the Hudson's Bay territory, and added the following Resolution:—

Colonial Office, January, 1867.

"Resolved, that this Conference, having had communication of an Order in Council of the Canadian Government, bearing date the 22nd of June, A.D. 1866, on the subject of the claims of the Hudson's Bay Company, and a proposition of certain parties to purchase 'such portions' of the North-West Territory as may be capable of cultivation, are of opinion that the views expressed by the Canadian Government on both points are well founded, and will be confirmed by the Parliament of Canada." This Resolution was communicated to the Company.

Sir John Macdonald, April 6,
1867.

Colonial Office, April 15, 1867,

The foregoing correspondence has been abstracted somewhat fully, because the Company may probably raise a question whether they were induced to lose favourable opportunities of dealing with their property, by the expectation held out to them of negotiations with them by the Canadian Government for an indemnity.

The Government and Legislature of the Dominion of Canada are now formed, and they propose that, without negotiating with the Company, the territory shall at once be annexed to Canada, leaving all proprietary rights, so far as they may exist, to be made good before the

Viscount Monck, No. , December 21, 1867; No. 1, January 1, 1868.

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Sir Edmund Head, January 15,
1868.

Crown Lawyers, January 4, and
January 6, 1868.

Courts which will be established for distributing justice, with an appeal to the Privy Council.

The Hudson's Bay Company have offered their objections.

The Crown lawyers have given their opinion on the existing legal state of the territory, and on the question of lawfully constituting a Government there, in case of the dissent of the Company.

These communications from Canada, the Company, and the Law Officers, are the papers on which a decision is now to be taken. They are separately printed *in extenso*.

But as the details required for completeness have somewhat protracted this précis, it may be allowed, in illustration of the difficulty hitherto of bringing this matter to a settlement, shortly to repeat the successive abortive attempts.

In 1850, certain private complainants were invited to try their cause before the Privy Council, but declined.

In 1857, Lord Taunton asked the Canadian Legislature to submit the question of boundary to the Privy Council, but they refused because they were not to discuss the validity of the Charter.

In the following year they were invited by Lord Lytton to test the validity of the Charter, but they declined.

In 1859, 1860, and 1861, the Secretary of State tried to mature a Bill for carving any required colonies out of the Company's territory, and providing compensation; but the Company were opposed to the terms, and the measure was never introduced.

In 1863 and 1864, attempts were made in vain to settle between the Company and the Crown, direct, the terms of extinguishing the Company's rights.

In 1865, the Ministers of the Province of Canada expressed themselves disposed to negotiate with the Company on the basis of an indemnity, but waited for the creation of the dominion of Canada.

In 1868, the dominion of Canada proposes to annex the territory at once, and to dismiss the subject of indemnity, leaving all parties to their rights in the Courts of Judicature.

T. F. E.

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